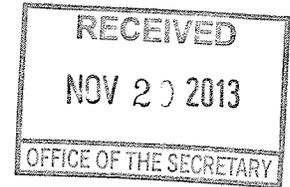


**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**



**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15556**

**In the Matter of**

**TIMOTHY J. GEIDEL,**

**Respondent.**

**MOTION FOR SUMMARY DISPOSITION**

The Division of Enforcement (“Division”), by counsel, pursuant to Commission Rules of Practice 154 and 250, respectfully moves the Court for an order of summary disposition against Respondent Timothy J. Geidel containing the following relief:

barring Respondent from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and barring him from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

The Division seeks this relief on the grounds that there is no genuine issue with regard to any material fact and that pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”), the Division is entitled to such relief as a matter of law. In support of its motion, the Division submits the below brief.

## BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION

### **I. Introduction**

On October 9, 2013, the Commission issued and served an Order Instituting Proceedings (“OIP”) on Respondent pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act. On October 15, 2013, the Commission issued and served on Respondent an Order Scheduling Hearing and Designating Presiding Judge (“Order”). Respondent filed an Answer to the OIP on October 28, 2013 (“Answer”). A pre-hearing status conference was held on November 4, 2013, at which time the Division was given leave to file its Motion for Summary Disposition no later than November 22, 2013.

### **II. Statement of Facts**

From November 1989 to August 2010, Respondent was a registered representative associated with Royal Alliance Associates, Inc. (“Royal Alliance”), which at all relevant times was a broker-dealer registered with the Commission and an investment adviser registered with the Commission (OIP at II.A.1; Web CRD printout of Respondent’s U4 Employment History, attached as Exhibit (“Ex.”) 1 to the Declaration of Michelle L. Ramos in Support of the Division’s Motion for Summary Disposition (“Ramos Decl.”)).<sup>1</sup> On September 13, 2011, Respondent pleaded guilty to one count of wire fraud in violation of 18 U.S.C. § 1343 and one count of structuring transactions to avoid reporting requirements in violation of 31 U.S.C. § 5324(a)(3) before the United States District Court for the Western District of New York, in *United States v. Timothy J. Geidel*, Crim. Information No. 1:11-CR-00012 (WMS-HBS) (OIP at

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<sup>1</sup> The Division asks that pursuant to Rule 323 of the Commission’s Rules of Practice, the Court take official notice of this and all other information, pleadings or filings referred to in this brief and/or filed as exhibits to the Ramos Decl.

II.B.2; Certified Copy of Judgment dated April 17, 2012, attached as Ramos Decl. Ex. 2). On April 17, 2012, Respondent was sentenced in that proceeding to a prison term of 42 months followed by three years of supervised release and ordered to make restitution in the amount of \$1,301,981.95 (OIP at II.B.2; Ramos Decl. Ex. 2).

The wire fraud count to which Respondent pleaded guilty alleged, among other things, that while employed as an investment adviser, he knowingly devised a scheme and artifice to defraud an investor by falsely representing that he intended to invest an individual's money in high yield investment vehicles, but instead used such money to repay other investors whom he had defrauded and for his personal gain. For the purpose of executing the scheme and artifice to defraud, in September and October of 2009, Respondent knowingly transmitted wire transfers of funds (OIP at II.B.3; Certified Copy of Superceding Information, attached as Ramos Decl. Ex. 3). At the time of his criminal conduct, Respondent was associated with Royal Alliance, a broker dealer and investment adviser registered with the Commission. (OIP at II.A.1; Ramos Decl. Ex. 1.).

### **III. Argument**

#### **A. Standards Applicable to the Division's Summary Disposition Motion.**

Rule 250(a) of the Commission's Rules of Practice permits a party to move "for summary disposition of any or all allegations of the order instituting proceedings" before hearing with leave of the hearing officer. 17 C.F.R. § 201.250(a). Rule 250(b) provides that a hearing officer may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b); *see Michael Puorro*, Initial Decision Rel. No. 253, 2004 SEC

LEXIS 1348, at \*3 (June 28, 2004) (citing 17 C.F.R. § 201.250); *Garcis, U.S.A.*, Securities Exchange Act of 1934 Rel. No. 38495 (Apr. 10, 1997) (granting motion for summary disposition).

As one Administrative Law Judge explained,

By analogy to Rule 56 of the Federal Rules of Civil Procedure, a factual dispute between the parties will not defeat a motion for summary disposition unless it is both genuine and material. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). Once the moving party has carried its burden, ‘its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.’ *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party must set forth specific facts showing a genuine issue for a hearing and may not rest upon the mere allegations or denials of its pleadings. At the summary disposition stage, the hearing officer’s function is not to weigh the evidence and determine the truth of the matter, but rather to determine whether there is a genuine issue for resolution at a hearing. *See Anderson*, 477 U.S. at 249.

*Edward Becker*, Initial Decision Rel. No. 252, 2004 SEC LEXIS 1135, at \*5 (June 3, 2004).

**B. No Genuine Issue of Material Fact Exists in This Matter and the Division is Entitled to Summary Disposition as a Matter of Law**

This administrative proceeding was instituted pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act based on Respondent’s criminal felony conviction for wire fraud. Section 15(b)(6) of the Exchange Act provides, in relevant part, that the Commission may censure, place limitations on, suspend, or bar from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and from participating in an offering of a penny stock, any person who has been convicted within the previous ten years of, among other things, “any felony or misdemeanor . . . which the Commission finds . . . involves the violation of . . . section . . . 1343 . . . of title 18, United States Code,” and who was associated with a broker or dealer at

the time of the alleged misconduct, if the Commission finds that such a sanction is in the public interest. Section 3(a)(18) of the Exchange Act provides that the term “person associated with a broker or dealer” includes “any employee of such broker or dealer.”

Section 203(f) of the Advisers Act provides, in relevant part, that the Commission may censure, place limitations on, suspend, or bar from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization any person who has been convicted within the previous ten years of, among other things, “any felony or misdemeanor . . . which the Commission finds . . . involves the violation of . . . section . . . 1343 . . . of title 18, United States Code,” and who was associated with an investment adviser at the time of the alleged misconduct, if the Commission finds that such a sanction is in the public interest. Section 202(a)(17) of the Advisers Act provides that the term “person associated with an investment adviser” includes “any employee of such investment adviser.”

Respondent was convicted of a violation of 18 U.S.C. § 1343, which is the federal criminal wire fraud statute. At the time of the misconduct for which he was convicted, Respondent was associated with Royal Alliance, a broker-dealer and investment adviser registered with the Commission. Respondent filed an Answer with this Court on October 28, 2013. That Answer does not raise any genuine issue as to any material fact regarding the details of his criminal conviction or his association with a registered broker-dealer and registered investment adviser at the time of his criminal conduct, and as such, the Division is entitled to the relief it seeks as a matter of law.

C. The Relief Sought by the Division is Appropriate and in the Public Interest

The Commission has found the following factors to be important considerations in assessing the public interest in an associational bar: the egregiousness of the [respondent's] actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the [respondent's] assurances against future violations, the [respondent's] recognition of the wrongful nature of his conduct, and the likelihood that the [respondent's] occupation will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5<sup>th</sup> Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981); *see also Joseph J. Barbato*, 53 S.E.C. 1259, 1282 n.31 (1999).

Respondent's actions here were egregious in that they caused financial losses of over \$1.3 million and resulted in a criminal prosecution and a period of incarceration of 42 months followed by three years of supervised release. Respondent's conduct was recurrent in that his criminal conduct began in approximately 1990 and continued through August 2010. (PACER Copy of Plea Agreement in *United States v. Timothy J. Geidel*, Crim. Information No. 1:11-CR-00012 (WMS-HBS), attached as Ramos Decl. Ex. 4). Finally, while the Respondent has given assurances in his Answer that he "took responsibility for [his mistakes]" and has "no interest in getting back into the brokerage business," (Answer at 4) such assurances are insufficient in light of the overall nature of Respondent's criminal conduct.

For these reasons, the Division states that it is necessary and appropriate for the protection of investors to bar Respondent from participation in the securities industry to the maximum extent allowed by the statutes, as requested in the relief sought by this Motion for Summary Disposition.

**III. Conclusion**

For the reasons set forth above, the Division respectfully requests that the Court grant its Motion for Summary Disposition and impose the relief requested by the Division.

Dated: November 20, 2013

Respectfully submitted,

  
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